

## **REMARKS**

Claims 1-22 are pending in the Application, all of which stand rejected by the Office Action mailed May 27, 2009. Claims 1, 16, and 22 are amended by the present response. Claims 1, 16, and 22 are independent claims. Claims 2-15 and 17-21 depend from independent claims 1 and 16, respectively.

Applicant respectfully requests reconsideration of pending claims 1-22, in light of the following remarks.

### **Rejections of Claims**

Claims 1, 16, and 22 stand rejected on the ground of nonstatutory double patenting over claims 1 and 18 of U.S. Patent No. 7367027 B1 and claims 1, 16, and 26 of U.S. Patent No. 7313791 B1.

Claims 1-15 stand rejected under 35 U.S.C. §102(a) as being anticipated by Criss *et al.* (US 2001/0029178 A1, hereinafter "Criss"). Claims 16-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Criss in view of Peleg. The Office Action generally repeats and maintains rejections previously stated in prior actions.

Applicant respectfully traverses the rejections for the reasons set forth during prior prosecution, and in addition, those set forth below. Applicant notes that, once again, as with previous submissions, the Office Action largely fails to address the previous arguments by the Applicant. As Applicant has previously addressed many of these issues, the arguments will not be repeated again in their entirety in this submission, including, for example, all of the previously discussed shortcomings in the teachings of the Criss and Peleg references. Applicant maintains its previous traversals of the previously asserted grounds of rejection, and expressly reserves its right to challenge the assertions made in the Office Action.

## **I. Claims 1, 16, and 22 Are Not Unpatentable For Nonstatutory Double Patenting**

Claims 1, 16, and 22 stand rejected for nonstatutory double patenting over claims 1 and 18 of U.S. Patent No. 7,367,027 and claims 1, 16, and 26 of U.S. Patent No. 7,313,791. Again, as with previous actions, the Office Action does not provide a sufficient explanation of those rejections beyond a table listing the language of those claims with portions underlined (in some instances, nearly the entirety of a claim except the preamble), and a statement that "underlined areas are reciting equivalent or identical or conveying same ideas in limitations in different words among the claims." (See Office Action at p. 4.) The Office Action then asserts, "Predicting is the same as the source and target images of the contents and that of the third environment arranged to first process data representative of shifting of objects within the existing code version to align with locations of corresponding object in an updated code version...this is one example as to why they are the same." (*Id.* at 5-6.) Applicant respectfully traverses this assertion, as the Office Action provides no comprehensible rationale for how or why "source and target images of the contents and that of the third environment arranged to first process data representative of shifting of objects..." somehow are the same as predicting. To the extent future Office Actions intend to maintain such a rejection, Applicant respectfully requests an itemized showing of where each and every element of the presently claimed subject matter is found in the previously patented claims, element by element. In any event, claims 1, 16, and 22 have been amended as discussed below. Applicant respectfully submits that the Office Action does not present sufficient findings to support unpatentability for non-statutory double patenting, and that, in any event, the present amendments render the rejections moot.

## **II. Criss Does Not Anticipate Claims 1-15**

As an initial matter, Applicant traverses the rejections of these claims for at least the same reasons as given in previous submissions. For example, Applicant is unable to find in the Office Action any response to the previous submissions pointing out, for example the differences between the specific contents of a location and the mere

teaching of a version number. (See, e.g., March 13, 2009 Response at p. 19.) Further still, Applicant traverses the Office Action's assertions regarding the term "predicting." For example, in responding to Applicant's previous submission, the Office Action asserts as follows:

A prediction is a statement or claim that a particular event will occur in the future in more certain terms than a forecast. Carefully consider that the claim language fails to outline the manner in which one of ordinary skill in the art would "predict..." Clearly based on at least the plain meaning the Examiner's broadest reasonable interpretation the prior art would still read on "prediction" as outlined in the claim. Further consider the written description outlines predictive methods, however the claim language fails to identify any of which methods that would overcome the prior art of record. The Applicant merely indicates predicting (i.e., a statement that an event will occur absent factual basis.), but lacks any substantial language that defines the factual logic. Absent factual logic a prediction equates to a prophecy.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning (e.g. predict), the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. [citation omitted]

Therefore, the claims 1-22 are broad enough that the cited references of Criss and Peleg read on said claims.

(Office Action at p. 2-3.) Applicants respectfully traverse these assertions for a number of reasons. For example, the Office Action fails to point out any instance of where Applicant is claiming to be his "own lexicographer" or where "predict" is being used contrary to the ordinary meaning. Applicant instead has merely pointed out that the previous Office Actions (as well as the current) entirely ignore the claim limitation "predicting..." Further, the Office Action appears to assert that predicting has been interpreted as "a statement that an event will occur absent factual basis" and/or as a

"prophecy." Even if those are the interpretations (which Applicant does not concede are correct) that are employed, *arguendo*, the Office Action still never identifies wherein any of the cited references teach "a statement that an event will occur absent a factual basis" or such a "prophecy." Applicant respectfully submits the Office Action cannot support a *prima facie* case of anticipation or obviousness by merely asserting that a claim term is "broad" -- regardless of how "broad" the Office Action asserts a claim to be, the purportedly "broad" claim limitations must still be taught by the prior art to support a finding of anticipation. For at least the reasons discussed previously, the cited aspects relied upon again by the Office Action do not teach, suggest, or otherwise render obvious "predicting...", even if the Office Action's purported "broadest reasonable interpretation" is used. To the extent any future Office Action intends to maintain this rejection and this interpretation, Applicant expressly requests a specific identification and explanation of where the cited art teaches either a "prophecy" or "a statement that an event will occur absent a factual basis" of the contents of locations in a new version of software.

In any event, claim 1 is amended by the present invention to clarify even further still patentably distinct aspects from the prior art. Claim 1 is amended to recite a mobile services network comprising, *inter alia*, "wherein generating comprises predicting the contents of locations in a new version of firmware based on differences in addresses identified between corresponding symbols in an old version of firmware and the new version of firmware, and identifying as nodes corresponding locations in the old version of firmware for the mobile electronic device and the new version of firmware for the mobile electronic device, for which contents of the location in the new version of firmware was not able to be predicted." Additional support for this amendment may be found in the Specification, for example, at paragraph [27]. Applicant respectfully submits that the cited art does not teach at least this aspect of claim 1. For example, such a prediction based on differences as fully set forth by the presently claimed subject matter is quite different than a mere identification of differences, or a mere comparison of two objects.

For at least the above discussed reasons in addition to those discussed in previous submissions, Applicant respectfully submits that Criss does not anticipate claim 1 or any claim that depends from claim 1, and that those claims are allowable.

### **III. The Proposed Combination Of Criss And Peleg Does Not Render Claims 16-22 Unpatentable**

As an initial matter, Applicant respectfully submits that claim 16 and its dependent claims are allowable for at least the reasons given in previous submissions. In any event, claim 16 is amended by the present response generally similarly to claim 1. Specifically, claim 16 is amended to recite a method for generating an update package stored in a computer readable medium using an old image and a new image of a firmware for a mobile electronic device in a mobile services network, the method comprising, *inter alia*, "wherein determining comprises predicting the contents of locations in the new version of firmware based on differences in addresses identified between corresponding symbols in the old version of firmware and the new version of firmware, and identifying as nodes corresponding locations in the old image of firmware and the new image of firmware for which contents of the location in the new image of firmware was not able to be predicted." As such, Applicant respectfully submits claim 16 and its dependent claims are further allowable for at least similar reasons to those stated above in connection with claim 1.

Applicants further respectfully submit that claims that depend from claim 16 are further allowable for additional reasons. For example, in rejecting claims 17 and 18, the Office Action merely refers to its grounds of rejection for the base claim. In connection with claim 18, the Office Action states, "Consider claim 18. The method according to claim 16 wherein the determining comprises similar limitation as claim 16 (see claim 16 for rejection)." (See Office Action at p. 23.) Applicants respectfully submit that the Office Action does not present a *prima facie* case of obviousness for these claims because they recite additional limitations to claim 16 that are not adequately identified or addressed by a mere reference to the rejection of claim 16. For example, claim 18 (amended by the present response for consistency with amended claim 16) recites

"[t]he method according to claim 16 wherein the determining comprises: determining addresses of symbols in the old image; determining addresses of corresponding symbols in the new image; comparing the differences in the addresses of the corresponding symbols in the old image and the new image; predicting differences in addresses of subsequent symbols based on the differences in the addresses of previous symbols; determining the symbols for which offsets cannot be predicted; and using the unpredictable symbols as additional node symbols." Applicant respectfully submits that a *prima facie* case of obviousness for all of these additional aspects of claim 18 cannot be supported by a mere reference to the rejection of the base claim. To the extent any future Office Action intends to reject either of claims 17 or 18, Applicant requests a specific identification of where each and every additional limitation recited by claims 17 and 18 are taught, suggested, or otherwise rendered obvious by the cited references.

Turning now to claim 22, Applicant respectfully submits, as an initial matter, that claim 22 is allowable for at least the reasons given in previous submissions. For example, in addition to the reasons given with respect to "predicting...", Applicant also pointed out certain deficiencies in the teachings of the cited art with respect to other aspects of claim 22, including with respect to aspects of claim 22 regarding the first and second filters as claimed, but is unable to locate any portion of the Office Action that addresses these points. (See March 13, 2009 Response at 20-21.) Applicants also identified a number of aspects of that claim for which no citation to prior art or explanation for how the prior art purportedly taught such an aspect was provided. (See *id.*) The current Office Action similarly fails to provide citation and explanation for each aspect of claim 22, including "creating a modified old image of the firmware utilizing the first filter" and "creating a modified old image of the firmware utilizing the second filter and the partially modified old image of the firmware." (See Office Action at p. 22.) To the extent any future Office Action intends to maintain these rejections, Applicant expressly requests a response to its previous arguments which have not yet been responded to, as well as a specific identification and explanation of where the cited art purportedly teaches those aspects for which a citation is still not provided.

In any event, claim 22 is amended by the present response generally similarly to claim 1. Specifically, claim 22 is amended to recite a method for generating an update package stored in a computer readable medium using an old image and a new image of a firmware for a mobile electronic device in a mobile services network, the method comprising, *inter alia*, "wherein determining comprises predicting the contents of locations in the new version of firmware based on differences in addresses identified between corresponding symbols in the old version of firmware and the new version of firmware, and identifying as nodes corresponding locations in the old image of firmware and the new image of firmware for which contents of the location in the new image of firmware was not able to be predicted based upon the old image of firmware." As such, Applicant respectfully submits claim 22 is further allowable for at least similar reasons to those stated above in connection with claim 1.

## Conclusion

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, Applicant will not address such statements at the present time. However, Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant believes that all of the pending claims are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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